Sivararaman Nair v Menteri Dalam Negeri Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO 44–23 OF 2000
AUGUSTINE PAUL J
19 JULY 2000

Criminal Procedure *— Habeas corpus — Detention of drug dependent — Calculation of period of detention — Applicant escaped from two year treatment at rehabilitation centre — Ten months imprisonment imposed — Whether required to complete the two year treatment — Whether imprisonment taken into account to deduct period of treatment — Drug Dependants (Treatment and Rehabilitation) Act 1983 ss 6(1)(a) & 21(1)*

On 22 September 1997, the learned magistrate ordered the applicant to undergo treatment at the Pusat Serenti Tampin ('the centre') for a period of two years under s 6(1)(a) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 ('the Act'). The applicant duly commenced his period of treatment. On 10 November 1997, he escaped from the centre. On 25 August 1999, he was arrested and was produced before the magistrate to answer the charge preferred against him. He pleaded guilty to the charge and was sentenced to ten months' imprisonment. The applicant served his prison term and was released from jail on 15 March 2000. However, he was sent to the centre to serve the remainder of the period of treatment. The applicant moved the court for a writ of habeas corpus on the ground that the two-year treatment order imposed on him had since expired and that his continued detention was unlawful. The order made against the applicant on 22 September 1997 would have expired on 21 September 1999. The court thus had to determine the manner of accounting for the period during which a person failed to receive treatment by virtue of being away from the rehabilitation centre.

Held, dismissing the application:

(1) The object of the Act, and in particular s 6(1)(a) of the Act, is to prescribe a specified period considered necessary and essential for the treatment and rehabilitation of a drug dependant. The period of treatment can be shortened only as authorized by s 12 of the Act (see p 581C–D). It follows that there is no other permissible way of shortening the period of treatment. Any interpretation that does not take into account a part of a period during which a person does not receive treatment as ordered will therefore defeat the object of the Act. A period of absence from a rehabilitation centre cannot be treated as part of the treatment for the simple reason that no treatment was received during the period. Thus a person whose period of treatment is shortened by reason of his absence from a rehabilitation centre for an unauthorized purpose must make up the loss in order to satisfy the requirement of the Act to receive treatment for a period of two years (see p 581F–G).

(2) The effect of a term of imprisonment served by a person against whom an order under s 6(1)(a) of the Act has been made is governed by s 21(1) of the Act (see p 581H). Section 21(1) of the Act applies to a person who has been sentenced to a term of imprisonment during the currency of, inter alia, an order under s 6(1)(a) of the Act. The time of commission of the offence is irrelevant. As the applicant was sentenced on 25 August 1999, it follows that the sentence was imposed on him during the currency of the order made against him as it would expire only on 21 September 1999. The sentence imposed on the applicant must be deemed to be part of the treatment period that he has been ordered to undergo and upon completion of the sentence of imprisonment he must receive treatment for any unexpired part thereof. The period for which the applicant was imprisoned shall be deducted from the period for which he has to receive treatment (see p 582D–F).

[Bahasa Malaysia summary

Pada 22 September 1997, majistret yang arif telah mengarahkan pemohon untuk menjalani pemulihan di Pusat Serenti Tampin ('pusat tersebut') untuk suatu tempoh dua tahun di bawah s 6(1)(a) Akta Penagih Dadah (Rawatan dan Pemulihan) 1983 ('Akta tersebut'). Pemohon telah memulakan tempoh pemulihannya. Pada 10 November 1997, beliau telah melepaskan diri dari pusat tersebut. Pada 25 Ogos 1999, beliau telah ditahan dan dikemukakan di hadapan majistret untuk menjawab pertuduhan terhadapnya. Beliau telah mengaku bersalah kepada pertuduhan tersebut dan telah dihukum sepuluh bulan penjara. Pemohon telah menjalani tempoh pemenjaraan tersebut dan telah dibebaskan dari penjara pada 15 Mac 2000. Namun demikian, beliau telah dihantar semula ke pusat tersebut untuk menjalani tempoh baki pemulihan tersebut. Pemohon telah memohon kepada mahkamah untuk suatu writ habeas corpus di atas dasar bahawa perintah pemulihan selama dua tahun yang dikenakan terhadapnya telah pun luput dan penahanannya secara berterusan adalah menyalahi undang-undang. Arahan yang dibuat terhadap pemohon pada 22 September 1997 akan luput pada 21 September 1999. Dengan itu, mahkamah terpaksa menentukan pengiraan tempoh tersebut di mana seseorang gagal untuk menerima rawatan kerana tidak berada di pusat pemulihan.

Diputuskan, menolak permohonan tersebut:

(1) Tujuan Akta tersebut, dan secara khususnya s 6(1)(a) Akta tersebut adalah untuk memperuntukkan suatu tempoh yang tertentu yang dianggap penting dan perlu untuk rawatan dan pemulihan seorang penagih dadah. Tempoh rawatan boleh dipendekkan hanya seperti yang dibenarkan s 12 Akta

tersebut (lihat ms 581C–D). Maka tiada cara lain yang dibenarkan untuk memendekkan tempoh rawatan tersebut. Sebarang penafsiran yang tidak mengambil kira tempoh di mana seseorang tidak menerima rawatan seperti yang diarahkan akan mengagalkan tujuan Akta tersebut. Suatu tempoh ketidakhadiran daripada pusat pemulihan tidak boleh dianggap sebagai sebahagian rawatan di atas alasan bahawa tiada rawatan telah diterima untuk tempoh tersebut. Oleh itu, seseorang di mana tempoh rawatan telah dipendekkan kerana ketiadaannya dari pusat pemulihan untuk tujuan yang tidak dibenarkan mestilah menggantikan tempoh tersebut untuk memuaskan keperluan Akta untuk menerima rawatan tempoh selama dua tahun (lihat ms 581D–F).

(2) Kesan suatu tempoh pemenjaraan yang dijalani oleh seseorang di mana suatu perintah di bawah s 6(1)(a) Akta tersebut telah dibuat adalah diliputi oleh s 21(1) Akta tersebut (lihat ms 581H). Seksyen 21(1) Akta tersebut adalah terpakai kepada seseorang yang telah dihukum untuk suatu tempoh pemenjaraan semasa perjalanan, antara lain, suatu tempoh di bawah s 6(1)(a) Akta tersebut. Masa berlakunya jenayah tersebut adalah tidak relevan. Oleh kerana pemohon telah dihukum pada 25 Ogos 1999, adalah jelas bahawa hukuman tersebut telah dikenakan ke atasnya semasa perjalanan perintah tersebut yang dibuat terhadapnya kerana ia akan luput hanya pada 21 September 1999. Hukuman yang dikenakan ke atas pemohon mestilah dianggap sebagai sebahagian daripada tempoh rawatan yang beliau telah diarahkan untuk melalui dan selepas penamatan hukuman pemenjaraan, beliau mestilah menerima rawatan untuk sebarang tempoh bahagian yang belum luput. Tempoh di mana pemohon telah dipenjarakan akan ditolak dari tempoh di mana beliau menerima rawatan (lihat ms 582D-F).]

Notes

For cases on habeas corpus generally, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 1505–1572.

Legislation referred to

Criminal Procedure Code s 282(d)
Drug Dependants (Treatment and Rehabilitation) Act 1983 ss 6(1)(a), 12, 19(3), 21(1)
Interpretation Act 1967 s 17A

T Vijayandran (*T Vijay & Co*) for the applicant.
Kamaludin bin Md Said (Federal Senior Counsel, Ministry of Home Affairs) for the respondents.

Augustine Paul J: The dominant issue for determination in the motion before me for a writ of habeas corpus is the manner of computing the period

of treatment under s 6(1)(a) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 ('the Act') when the person against whom such an order has been made does not serve part of the period during its currency. A

Sivaraman Nair ('the applicant') was arrested by the police on 9 September 1997 on suspicion of being a drug dependant. On 22 September 1997, he was produced before the magistrate at the Magistrate's Court, Jalan Raja, Kuala Lumpur for an order under s 6(1)(a) of the Act. The learned magistrate, upon a perusal of the medical report and the report of the rehabilitation officer as required, ordered the applicant to undergo treatment at the Pusat Serenti Tampin ('the Pusat') for a period of two years under s 6(1)(a) of the Act. The applicant duly commenced his period of treatment. On 10 November 1997, he escaped from the Pusat. Four days later he was arrested and was charged before the magistrate at the Magistrate's Court, Alor Gajah for an offence under s 19(3) of the Act. He was then released on bail but he breached the terms of the bail bond and disappeared. On 25 August 1999, he was arrested and was produced before the magistrate to answer the charge preferred against him. He pleaded guilty to the charge and was sentenced to ten months' imprisonment. The applicant served his prison term and was released from jail on 15 March 2000. However, he was sent to the Pusat to serve the remainder of the period of treatment. B C D

The applicant has now moved the court for a writ of habeas corpus on the ground that the two-year treatment order imposed on him has since expired and that his continued detention is unlawful. The order made against the applicant on 22 September 1997 would have expired on 21 September 1999. During the period of the order the applicant had received treatment only from 22 September 1997 to 10 November 1997, that is to say, for a period of about one and half months. It will therefore be observed that the applicant did not serve the two-year treatment period fully as he had escaped from the Pusat for a major part of the period and was serving part of a jail-term for the remaining period. In order to determine whether the continued detention of the applicant is unlawful what requires consideration is the manner of accounting for any period or periods during which a person fails to receive treatment as ordered by virtue of being away from the rehabilitation centre. E F G

In resolving this issue it must be noted that s 6(1)(a) of the Act refers to an order '... for a period of two years ...'. What requires determination is whether the words that I have emphasized contemplate treatment for a full two-year period thus taking into account any period during which a person did not receive treatment or whether the words refer to a period of two years commencing from the date of the making of the order and terminating at the end of the period even if a person did not receive treatment for part of the period. The first observation to be made is that an order made under s 6(1)(a) of the Act need not commence with effect from the date of making the order. It can commence at a later date as made evident by s 21(1) of the Act which by its reference to a person who ' ... has not yet commenced to undergo the same ...' contemplates such an intention. Though the period of treatment can therefore commence at a later date it must be for a period H I

of two years as stated in s 6(1)(a) of the Act. In determining whether the two-year period of treatment must take into account any period during which a person did not receive any treatment the paramount factor for consideration is the object of the Act. A statute must be interpreted in such a way as to promote its object. This is statutorily recognized by s 17A of the Interpretation Act 1967 which reads as follows:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

The object of the Act as demonstrated by its long title is as follows:

> An Act to provide for the treatment and rehabilitation of drug dependants and for matters connected therewith.

The object of the Act, and in particular s 6(1)(a) of the Act, is therefore to prescribe a specified period considered necessary and essential for the treatment and rehabilitation of a drug dependant. The period of treatment can be shortened only as authorized by s 12 of the Act which reads as follows:

> (1) The Director-General may shorten the period of residence at any Rehabilitation Centre in respect of any person for reasons which appear to him to be sufficient if such person has already completed a period of twelve months of residence in such centre.
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> (2) The Director-General may, with the consent in writing of the minister, discharge from a Rehabilitation Centre a person who has not yet completed a period of twelve months of residence at the centre for special reasons pertaining to the welfare of such person.

It follows that there is no other permissible way of shortening the period of treatment. Any interpretation that does not take into account a part of a period during which a person does not receive treatment as ordered will therefore defeat the object of the Act. The result is that a period of absence from a rehabilitation centre cannot be treated as part of the treatment for the simple reason that no treatment was received during the period. Thus a person whose period of treatment is shortened by reason of his absence from a rehabilitation centre for an unauthorized purpose must make up the loss in order to satisfy the requirement of the Act to receive treatment for a period of two years. Accordingly, a person who has escaped from custody during the two-year period of treatment for a specified duration will have that length of period added to the order made against him. Therefore the period during which the applicant had escaped from the Pusat must be added to the original two-year period of treatment ordered to ensure that he receives treatment for two years.

The effect of a term of imprisonment served by a person against whom an order under s 6(1)(a) of the Act has been made is governed by s 21(1) of the Act which reads as follows:

> Where a person who is undergoing residence at a Rehabilitation Centre, supervision by an officer or has been ordered to do so but has not yet

> commenced to undergo the same, is sentenced by any court to any term of imprisonment, or by a Juvenile Court to a term of detention, or is detained under any law relating to preventive detention, such imprisonment or detention shall take precedence over the residence or supervision as aforesaid, and the period of imprisonment or detention served shall be deemed to be residence at a Rehabilitation Centre or supervision, as the case may be, and if upon completion of such period of imprisonment or detention there still remains unexpired any portion of the period for which he had been ordered to reside at a Rehabilitation Centre, or undergo supervision, as the case may be, he shall be required to reside at a Rehabilitation Centre or undergo supervision, as the case may be, for such unexpired portion thereof.

In his submission before me learned counsel for the applicant contended that s 21(1) of the Act only applies when a person is called upon to answer a charge in respect of an offence committed prior to the making of an order against him under s 6(1) of the Act. He added that as the term of imprisonment in this case was imposed at a time when the applicant was not undergoing treatment s 21(1) has no application. With respect, I am unable to agree with the argument advanced by learned counsel. Section 21(1) of the Act does not in any way refer to the time of commission of the offence. It only refers to the imposition of a sentence of imprisonment in respect of '... a person who is undergoing residence at a Rehabilitation Centre, supervision by an officer or has been ordered to do so but has not yet commenced to undergo the same ...'. Thus s 21(1) of the Act applies to a person who has been sentenced to a term of imprisonment during the currency of, inter alia, an order under s 6(1)(a) of the Act. The time of commission of the offence is therefore irrelevant. As the applicant was sentenced on 25 August 1999 it follows that the sentence was imposed on him during the currency of the order made against him as it would expire only on 21 September 1999. This makes it unnecessary to consider the new period of treatment caused by the escape of the applicant from the Pusat. Thus the sentence imposed on the applicant must be deemed to be part of the treatment period that he has been ordered to undergo and upon completion of the sentence of imprisonment he must receive treatment for any unexpired part thereof.

The two-year period of treatment of the applicant that commenced on 22 September 1997 was interrupted on 10 November 1997 when he escaped from custody. He must therefore receive treatment for the balance of the two-year period when he commenced treatment on 15 March 2000. This will amount to a period of about one year ten and a half months from that date. The term of imprisonment that he had served from 25 August 1999 to 15 March 2000 shall be treated as part of the period of treatment. This means that the period for which the applicant was imprisoned shall not be used to extend the period of his treatment as in the case of the period during which he had escaped but, on the other hand, shall be deducted from the period for which he has to receive treatment now. It will therefore be noticed that s 21(1) of the Act works to the advantage of the applicant. Learned counsel's argument that sending the applicant for further treatment now may not serve any purpose as he may no longer be a drug dependant is a matter for consideration by the relevant authorities under

A s 12 of the Act. I pause to suggest that s 21(1) of the Act may require to be reviewed by the relevant authorities. The treatment of a term of imprisonment as taking precedence over an order made under s 6(1)(a) of the Act may defeat the object of rehabilitating a drug dependant. Thus it may be more appropriate to give precedence to an order made under s 6(1)(a) of the Act. The term of imprisonment can be made to take effect B from the expiry of the period of treatment pursuant to s 282(d) of the Criminal Procedure Code.

In the circumstances the detention of the applicant is lawful and I dismissed his motion.

C *Application dismissed.*

Reported by Benjamin Yong

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